

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-7509

HARRY DARNELL SIMMS,

Petitioner - Appellant,

versus

RICKIE HARRISON, Warden; ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. David C. Norton, District Judge.
(CA-94-2126-3-18BC)

Submitted: April 30, 1996

Decided: May 24, 1996

Before WIDENER and LUTTIG, Circuit Judges, and BUTZNER, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Harry Darnell Simms, Appellant Pro Se. Donald John Zelenka, Chief
Deputy Attorney General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's order denying relief on his 28 U.S.C. § 2254 (1988) motion alleging ineffective assistance of counsel. Specifically, Appellant alleged before the district court that his attorney was ineffective for four reasons: (1) failure to investigate the possibility that a search violated the Fourth Amendment due to a lack of probable cause; (2) failure to investigate the possibility that a search violated the Fourth Amendment due to the fact that the police failed to serve him with a search warrant; (2) failure to request a preliminary hearing; and (3) failure to challenge the validity of his arrest as not supported by probable cause.

Our review of the record discloses that allegations (2), (3), and (4) were not presented to the South Carolina Supreme Court in Appellant's appeal from the denial of his post-conviction relief application. Accordingly, they are not properly exhausted. Were Appellant to attempt presentation of those claims to the state supreme court now, however, he would be barred by South Carolina law. S.C. Code Ann. § 17-27-90 (Law. Co-op. 1985). Appellant has shown no cause for lifting this bar and accordingly we dismiss these claims as barred. See Kornahrens v. Evatt, 66 F.3d 1350, 1357 (4th Cir. 1995), petition for cert. filed, ____ U.S.L.W. ____ (U.S. Feb. 27, 1996) (No. 95-8094).

Regarding Appellant's remaining allegation of ineffectiveness, we have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no

reversible error. Accordingly, we dismiss this claim on the reasoning of the district court. Simms v. Harrison, No. CA-94-2126-3-18BC (D.S.C. Aug. 28, 1995). Having thus disposed of each allegation, we deny a certificate of probable cause to appeal and dismiss. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED